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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,003	03/22/2001	David M. Sabatini	WIBL-P02-001	5682
21559	7590	11/17/2005	EXAMINER KAUSHAL, SUMESH	
CLARK & ELBING LLP 101 FEDERAL STREET BOSTON, MA 02110			ART UNIT 1633	PAPER NUMBER

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/817,003

Applicant(s)

SABATINI, DAVID M.

Examiner

Sumesh Kaushal Ph.D.

Art Unit

1633

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 21 October 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 160-177 and 237-240.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER


11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Sumesh Kaushal
Primary Examiner
Art Unit: 1633

Continuation of 11. does NOT place the application in condition for allowance because:

Claims 160-175 and 237-240 stand rejected under 35 U.S.C. 102(e) as being anticipated by Taylor et al (US 6,103,479 2000) for the same reasons of record as set forth in the office action mailed on 04/20/05. The applicant argues that 1000 x 1500 arrays as projected by the earlier office action refers to an array having dimensions of 20 mm x 30 mm that, when imaged, would consist of 1000 pixels x 1500 pixels. Therefore the cited art does not anticipate an array of at least 96 locations of transfected eukaryotic cell having a density of atleast 100 locations per square centimeter. However, applicant's arguments are found not persuasive because the earlier office action(s) clearly stated that Tylaor teaches micro-patterns at discrete locations comprising an array of different forms, which accommodate a sample size from 1 nanoliter (nl) to 1000nl (Tylor col.9 lines 7-10). Tylaor further teaches that the size of a well on micro-patterned array ranges from 200 micron to 400 micron (Fig 3.B) see page 3 of final office action mailed 4/20/05. Therefore there are about 625 (for 400X400 square micron) to 2500 (200x200 square micron) locations per square centimeter as taught by prior art of record. In addition the cited art teaches that Taylor is capable of making 20mmX30mm micro-patterned array of cells that will fill 1000X1500 array of 10um pixels yielding 20 um pixel resolution sufficient to record an average response in single well (col 16, lines 44-50). Therefore at 20 umm pixel resolution the cited art of record is capable of detecting at least 250,000 locations per square centimeter. Thus the cited art clearly anticipate the invention as claimed.

In addition, since Taylor clearly anticipate the invention of claims 160-175 and 237-240 as stated above the invention of claims 176 and 177 is further obvious in view of Montgomery PNAS 95(26):15502-7, 1998) for the same reasons of record as set forth in the office action mailed on 4/20/05.


SUMESH KAUSHAL
PRIMARY EXAMINER
ART UNIT 1633